

TTAB

Attorney Docket: CA-3 (#90026)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



In the Matter of Trademark Registration No. 1,446,556
Mark: "ENVY" in International Class 25

10-10-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #77

J.W.E. SILK, INC.,

Petitioner

vs.

COMMODITIES ASSISTANCE CORP.

Registrant

Cancellation No. 92/040,607

TRADEMARK TRIAL AND
APPEAL BOARD
OCT 18 PM 9:30

BOX TTAB - NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

**REGISTRANT'S FIRST SET OF INTERROGATORIES AND INITIAL
REQUESTS FOR PRODUCTION OF DOCUMENTS TO PETITIONER**

Please take notice that pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, Petitioner, J.W.E. Silk, Inc., hereinafter referred to as Petitioner, is required to serve upon the undersigned within thirty (30) days after service hereof, answers under oath to each of the interrogatories set forth below, and produce documents as requested below.

INSTRUCTIONS

The following instructions apply to each Interrogatory and/or Request:

1. Petitioner's responses to these interrogatories shall set forth each corresponding Interrogatory and/or Request in full before each answer or objection.

2. The information requested includes such information as Petitioner knows of its own personal knowledge, as well as that which is available to Petitioner, including, but not limited to, information which is in the possession of Petitioner's attorney, accountant, investigators, insurance carriers, agents or employees and anyone else acting in Petitioner's behalf or on their behalf.

3. If the answering party is a public or private corporation, a partnership, association, or a governmental agency, the answering officer or officers, agent or agents, shall furnish such information as is available to the entity, itself, and not merely that which is available to him or her personally.

4. If, after exercising due diligence to secure the information requested, Petitioner cannot fully answer an Interrogatory and/or Request or any part thereof, state the reasons for such inability to fully answer, answer the Interrogatory and/or Request to the fullest extent possible, and state what information, knowledge or belief Petitioner has concerning the unanswered portion.

5. If Petitioner objects to an Interrogatory and/or Request or any part thereof, state the reasons for your objection and answer fully those parts to which Petitioner does not object.

6. These interrogatories shall be deemed continuing, and supplemental answers shall be required if Petitioner directly or indirectly obtains further information of a nature sought herein between the time the answers were served and the time of trial or hearing. The obligation to supplement includes, but is not limited to, supplementing Petitioner's response to each Interrogatory and/or Request addressed to the identity of persons having knowledge of discoverable matter or expected to testify as expert witnesses (including the subject matter and substance of the expert's

testimony). In addition, the Petitioner is under a duty to seasonably amend a prior response to these interrogatories if information is obtained which discloses (a) that the response was incorrect when made or (b) that the response, though correct when made, is no longer true in light of that information.

7. With respect to each document which Petitioner contends is privileged or otherwise excludible from discovery, state the basis for the privilege or other ground for exclusion so that Registrant and the TTAB may have sufficient factual basis to determine whether or not such documents or other material is privileged, including the name and address of the author and the addressee(s), the date, the general subject matter, the name and address of the person(s) who now have the original and any copies, and the identification and location of the files where the original and each copy are normally kept.

8. If the answering party, without substantial justification, either refuses to answer, or provides an evasive or incomplete answer to these propounded interrogatories, TTAB may order the answering party to answer same and that the answering party, or their attorney, or both, pay the propounding party those reasonable expenses incurred in obtaining such order, including the propounding party's attorneys' fees.

DEFINITIONS

The following definitions apply to each Interrogatory and/or Request:

a) The term "document" as used in these interrogatories includes (without limitation and irrespective of whether original, copy or draft) all documents, objects, contracts, agreements, memoranda, assignments, licenses, minutes of meetings, books of account, orders, statements, computation sheets, reports, photographs, drawings of any kind, layouts, art work,

tracings, blueprints, sketches, charts, schematic diagrams, catalogs, brochures, computer programs and print outs and tapes and magnetic disks, books, papers, files, purchase orders, bills, invoices, accounts, canceled checks, ledgers, correspondence, inter-office communications, communications of any kind, letters, e-mails, notes (in pencil, ink, or typewritten), including notes or records of oral communications, notebooks, telexes, telegrams (and other messages) audio or video tapes, and advertising or promotional material, instructions, or material of any kind, whether or not the document is privileged or within Petitioner's possession, control, or custody, as well as all drafts thereof and all copies bearing any notations not appearing on the original.

b) "Petitioner," "you," "your" and "J.W.E. Silk" mean Petitioner, J.W.E. Silk, Inc., including related companies within the meaning of Section 45(d) of the Trademark Act of 1946 (15 U.S.C. 1127), its predecessors in interest, successors, divisions, subsidiaries, affiliates, licensees, franchisees and all officers, directors, employees, attorneys, consultants, agents, servants, accountants and all other persons or entities acting on behalf of or representing J.W.E. Silk, Inc.

c) "Person affiliated with J.W.E. Silk, Inc." means any person who is now or has ever been an officer or director of, employed by, under the control of, under contract with, or a representative of J.W.E. Silk, Inc.

9. A request to "identify":

a) a "person" when referring to a natural person means to state his or her full name, present or last known address (specifying which), present or last known telephone number (specifying which), and, where applicable, present or last known employer or business affiliation (specifying which) and address thereof, present or last known job, position or title (specifying which), and relationship to the parties to this action;

b) a "person" when referring to an entity means to state the full name thereof, present or last known address (specifying which), date, state and country of organization, name under which organized and identity of the chief executive officer or person holding comparable position;

10. A request to "identify" a "document" means to state:

a) the general nature of the document (i.e., whether it is a letter, memorandum, report, drawing, chart, pamphlet, etc.);

b) a statement of the particularized subject matter of the document;

c) the occasion for and/or circumstances under which the document was prepared;

d) the identity of the original authors or draftpersons of the document, as well as the identity of any person who has edited, corrected, revised, amended or placed any initials, comment, or notation thereon;

e) the identity of the companies or firms with which those persons listed in (d) were associated on the date of the document;

f) the date on the document, and date it was created, if different, as well as every date on which it was edited, corrected, revised or amended;

g) the identity of every person to whom or which the document was addressed or to be sent and of every other person you have reason to believe actually reviewed or received the document;

h) the identity of every person now having possession, custody, or control of such document;

i) the identity of the custodian of the original or a copy of such document; and

j) the production number, if any, assigned by you to the document for purposes of this litigation.

11. A request to "identify" a "communication" means to identify the persons sending, receiving or participating in the communication, to state the nature of the communication, the time, date and place it took place, and to identify all documents relating to the communication.

12. The word "thing" refers to any tangible object other than a document, and includes objects of every kind and nature such as, but not limited to, prototypes, models and specimens.

13. The words "every," "each," "all," "any," and "such" shall be construed in a manner which makes the Interrogatory and/or Request most inclusive.

14. "Person" means any individual, firm, corporation, joint venture, partnership, association, fund, organization, or other entity.

15. The words "and" and "or" shall be construed conjunctively or disjunctively, whichever makes the Interrogatory and/or Request more inclusive.

16. "Fact" refers to, without limitation, every matter, occurrence, act, event, transaction, occasion, instance, representation, practice, policy, course of conduct or other happening and the source or basis upon which knowledge of such fact is based.

17. Every pronoun shall mean the masculine, feminine or neuter gender, as may be appropriate. The singular of every noun or pronoun shall include the plural, and the plural of every noun or pronoun shall include the singular, as may be appropriate.

18. "Relate to" and "relating to" mean, without limitation, "refer to," "comprise," "contain," "describe," "discuss" or "pertain to."

INTERROGATORIES

The interrogatories are as follows:

INTERROGATORY NO. 1:

Identify all present and past corporate officers of Petitioner, any related company of Petitioner and any manufacturer or distributor of goods and services bearing the mark ENVY, who have any knowledge of the facts stated in Petitioner's United States trademark application serial number 76/199,460 for the mark ENVY.

INTERROGATORY NO. 2:

With respect to the alleged mark ENVY, or any part or portion thereof used alone or in combination with other terms or devices:

(a) Identify each person having knowledge or information relating to the initial selection, adoption and contemplated or actual date of first use of ENVY in the United States.

(b) Set forth all facts known to Petitioner and identify all documents relating or referring to its creation, selection, adoption and contemplated or actual date of first use. If appropriate, such information may include the contemplated or actual date of first use; the manner in which Petitioner has used or plans to use the mark ENVY with each type of goods and/or services to which it is applied; a description of the types of media in which Petitioner has used or plans to use the mark ENVY in any way in the advertising of its goods in the United States; the name of the buyer if first use was a sale of goods and/or services with the subject mark affixed thereto or displayed in conjunction therewith; an identification of any writings upon which Petitioner will rely to support the date of first use; and the identity of any witnesses having knowledge of the date of first use.

INTERROGATORY NO. 3:

State whether or not Petitioner has ever, either at the time of adoption or at a later date, conducted any investigation or search of the Federal Trademark Register or the Register of any state, or conducted any survey or other investigation to determine the likelihood of confusion, with regard to the alleged mark ENVY, or any part or portion thereof used alone or in combination with other terms or devices. If the answer is other than an unqualified negative, please:

- (a) Indicate when each such investigation or search was conducted.
- (b) Identify all documents relating in any way to any such investigation or search.
- (c) Identify all registrations or pending applications which were located as a result of any such investigation or search.
- (d) Identify the person or persons who are most familiar with the facts and documents relating to the conducting of any such investigation or search and the results thereof.

INTERROGATORY NO. 4

Identify and describe with particularity any and all goods and/or services which have been and/or are currently being promoted, sold, distributed or otherwise provided by Petitioner or any licensee of Petitioner or any manufacturer or distributor of Petitioner in connection with the mark ENVY, or any part or portion thereof used alone or in combination with other terms or devices, including, but not by way of limitation, the goods identified in Federal Trademark application serial no. 76/199,460.

INTERROGATORY NO. 5

Identify and describe with particularity any and all goods and/or services which are planned to be promoted, sold, distributed or otherwise provided by Petitioner or any licensee of Petitioner in connection with the mark ENVY, or any part or portion thereof, used alone or in combination with other

terms or devices, including but not by way of limitation, the goods identified in Federal Trademark application serial no. 76/199,460.

INTERROGATORY NO. 6

With respect to each of the goods and/or services identified in your answer to Interrogatory No. 4, describe with particularity the channels of distribution by which the goods and/or services reach the ultimate consumer including (but not limited to):

(a) the nature and circumstances surrounding the sales (e.g., whether the goods and/or services are provided or offered in conjunction with or as an adjunct to the selling of other goods or services of Petitioner);

(b) the types and ages of persons who are known to be purchasers or users of the goods and/or services; and

(c) the types and ages of persons to whom advertisements or promotional materials for goods and/or services are directed whether or not same are assumed to be users and/or purchasers.

INTERROGATORY NO. 7

With respect to each of the goods and/or services identified in your answer to Interrogatory No. 4, state the following information for each good or service from the date the product or service was first sold or provided in the United States:

(a) annual sales in approximate dollar amounts and/or an approximate estimate of the number of consumers provided with such goods and/or services;

(b) annual advertising and promotional expenditures;

(c) the geographical area of the sales and/or area in which goods and/or services are/were provided;

(d) the inclusive dates of each period lasting three (3) months or longer during which there was no sale of goods and/or no services provided; and

(e) identify all documents with particularity which relate to the goods and/or services, including each piece of advertising and/or promotional material used or distributed in connection with each such good or service, indicating the period during which the document was used and the geographical area of use.

INTERROGATORY NO. 8

Identify any facility owned or leased by Registrant which was visited by Petitioner prior to the filing of the Petition to Cancel in cancellation no. 92/040,607, in an effort to determine if Registrant is using the trademark ENVY.

INTERROGATORY NO. 9

With respect to each product or service identified in the answer to Interrogatory No. 4, identify all third party publications in which Petitioner or its licensee(s) or distributor(s) advertises or promotes such goods and/or services or provides information or offers to provide information concerning the goods and/or services sold or provided.

INTERROGATORY NO. 10

With respect to each product or service identified in the answer to Interrogatory No. 4, identify the person or persons who have been and/or are responsible for the sale, advertising, promotion, and provision of each such product and/or service in conjunction with the mark ENVY, or any part or portion thereof, used alone or in combination with other terms or devices, indicating the time period during which each person was responsible for such products and/or services.

INTERROGATORY NO. 11

State with specificity any goods and/or services sold, offered, or distributed by Petitioner, in addition to those goods and/or services identified in the answer to Interrogatory No. 4.

INTERROGATORY NO. 12

With respect to the mark ENVY, or any part or portion thereof used alone or in combination with other terms or devices:

(a) Identify and provide a specimen of each form of planned or actual usage of the mark by Petitioner.

(b) State the dates of initial selection, adoption and expected or actual first use of each form of usage in the United States.

(c) Provide all details of how each particular form of usage is or is planned to be employed (e.g., labels, signs, letterhead, brochures, accounting documents, pre-packaged forms, web pages, etc.).

INTERROGATORY NO. 13

For each of the foregoing interrogatories, unless already done in answering the interrogatory, please identify:

(a) the person(s) most knowledgeable with respect to the facts stated in the answer; and

(b) all files of Petitioner, giving label name and location, which were consulted in the preparation of answers to these interrogatories.

INTERROGATORY NO. 14

Describe all relevant facts and circumstances surrounding any instance of confusion or mistake, or alleged confusion or mistake, between Petitioner's mark and any other mark, including Registrant's ENVY mark, or between the identity of Petitioner and Registrant.

INTERROGATORY NO. 15

Identify all persons who prepared, assisted in preparation of, or provided information for the responses to the foregoing interrogatories stating, for each such person, each separate response to the foregoing interrogatories which he or she prepared, assisted in preparation of, or otherwise provided information.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents identified or requested to be identified in response to Interrogatory Nos. 1 through 15 served simultaneously herewith and all documents to which Petitioner referred in answering those interrogatories.

2. To the extent not produced in response to Request No. 1 above, a specimen of each different label or device used or contemplated for use by Petitioner in connection with goods or services bearing the alleged mark ENVY, alone or in combination with other terms or devices.

3. To the extent not produced in response to Request Nos. 1 and 2 above, a specimen of each different advertising and/or promotional piece used or contemplated for use by Petitioner, and any related company of Petitioner, and any manufacturer or distributor in connection with goods or services bearing the alleged mark ENVY, alone or in combination with other terms or devices.

4. To the extent not produced in response to Request Nos. 1-3 above, all documents relating or referring to the initial selection or adoption by Petitioner of the alleged mark ENVY, including any trademark search reports.

5. To the extent not produced in response to Request Nos. 1-4 above, all documents relating or referring to uses by persons other than Petitioner of the term ENVY, or phonetic equivalents thereof, alone or in combination with other terms or devices as a mark.

6. To the extent not produced in response to Request Nos. 1-5 above, all documents referring or relating to any search reports, market research or surveys conducted by or on behalf of Petitioner involving the mark ENVY, or portions thereof, alone or in combination with other terms or devices.

7. To the extent not produced in response to Request Nos. 1-6 above, all license agreements involving use of the term "ENVY," alone or in combination with other terms or devices and documents referring or relating to such license agreements.

8. To the extent not produced in response to Request Nos. 1-7, above, all agreements relating or referring (i) to the manner in which Petitioner or any other entity will use the term "ENVY" or (ii) any other limitation on use of the ENVY mark by Petitioner or any other entity.

9. To the extent not produced in response to Request Nos. 1-8, above, any documents relating or referring to likelihood of confusion and/or actual confusion between the alleged mark ENVY and any other mark.

10. To the extent not produced in response to Request Nos. 1-9 above, any documents relating or referring to the users and/or potential users of the goods or services provided by Petitioner in conjunction with the designation ENVY, alone or in combination with any other terms or devices.

11. To the extent not produced in response to Request Nos. 1-10, any document relating or referring to use of the ENVY.

12. To the extent not produced in response to Request Nos. 1-11, any business plan to use the ENVY mark by Petitioner, or any other licensee or potential licensee in the United States.

13. To the extent not produced in response to Request Nos. 1-12, any document relating or referring to:

- a) the date of first use of the ENVY mark by Petitioner or a licensee;

b) the manner in which Petitioner or licensee or a potential licensee plans to use the ENVY mark on the goods to which it will be applied; and

c) a description of the types of media in which Petitioner or a licensee or a potential licensee or a distributor or a manufacturer has plans to use the mark ENVY in any way in the advertising of the goods in the United States.

14. To the extent not produced in response to Request Nos. 1-13, all documents identified or requested in response to Interrogatory Nos. 1-15 serve simultaneously herewith and all documents to which Petitioner referred in answering those interrogatories.

15. To the extent not produced in response to Request Nos. 1-14, all documents Petitioner intends to submit or rely on in this cancellation proceeding.

Respectfully submitted,

Date:

October 8, 2002

By:


D. PETER HOCHBERG

Reg. No. 24,603

DPH/KRV
D. PETER HOCHBERG CO., L.P.A.
The Baker Building, 6th Floor
1940 East 6th Street
Cleveland, Ohio 44114
(216) 771-3800

CERTIFICATE OF SERVICE

I, D. Peter Hochberg, hereby certify that on October 8, 2002, I have mailed by first-class United States mail, postage prepaid, the foregoing REGISTRANT'S FIRST SET OF INTERROGATORIES AND INITIAL REQUESTS FOR PRODUCTION OF DOCUMENTS TO PETITIONER to:

Glenn Ostrager, Esquire
Ostrager Chong & Flaherty LLP
825 Third Avenue
New York, NY 10022-7519

By:


D. PETER HOCHBERG





10-09-2002

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #70

TTAB
UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: September 30, 2002

Cancellation No. 92029597

FACILCORP

v.

FACILICORP, INC.

Amy King, Paralegal Specialist

On May 14, 2002 the Board issued an order suspending this proceeding in view of the withdrawal of respondent's counsel on January 7, 2002. Respondent was allowed time in which to either appoint a new attorney or to state that respondent would represent itself. No appearance or other response has been received.

Accordingly, respondent is allowed until thirty days from the mailing date of this order to show cause why default judgment should not be entered against respondent based on respondent's apparent loss of interest in this case.

Proceedings herein remain otherwise suspended.

TRADEMARK TRIAL AND
APPEAL BOARD
02 OCT 18 PM 9:30